IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal No.2246 of 2001

M. Duraisamy ... Appellant/ Petitioner

vs.

1. State of Tamilnadu,
represented by its
Secretary to Government,
Housing and Urban
Development Department,
Fort St. George, Chennai-600 009.

2. The Special Tahsildar,
(Land Acquisition)
Housing Scheme Unit II,
Collectorate, Coimbatore-18. ... Respondents/
Respondents

Appeal under Clause 15 of the Letters Patent as against the order of the learned single Judge, dated 11.07.2001, in W.P. No.9521 of 1994.

W.P.9521 of 2004:- Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the Section 4(1) Notification issued in G.O.Ms.No.139, Housing and Urban Development dated 30.1.1991 published in part II Section 2 (Supplement) to the Tamilnadu Government Gazette dated 27.02.1991 and the Section 6 Declaration issued in G.O.Ms.No.114, Housing and Urban Development dated 17.3.1992 published in Part II Section 2 of the Tamilnadu Government Gazette Extraordinary dated 18.3.1992 and quash the same in so far as it relates to the lands of the pettioner and consequently direct the respondents to exclude the lands of the petitioner in S.F.No.733/8 of Kalapatty Village, Coimbatore North Taluk, Coimbatore District from the Land Acquisition Proceedings under the Land Acquisition Act.

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For Appellant : Mr.K.V.Subramanian,
Senior Counsel for Mr.K.Goviganesan.
For Respondents : Mr.P.Wilson, Special
Government Pleader.

J U D G M E N T

P.SATHASIVAM, J.

The above Writ Appeal is directed against the order of the learned single Judge, dated 11.07.2001, made in W.P. No.9521 of 1994, in and by which, the learned Judge, after finding that the land owner had approached this Court after passing of the Award, that too with considerable delay, dismissed the Writ Petition on the ground of laches.

2. Heard Mr.K.V.Subramanian, learned Senior Counsel for the appellant and Mr.P.Wilson, learned Special Government Pleader for the respondents.

3. At the foremost, learned Senior Counsel for the appellant submitted that inasmuch the appellant had purchased the land even on 27.04.1987 and was pursuing for change of patta in his name, the Land Acquisition Officer ought to have issued notice to him and failure to do so would vitiate the entire acquisition proceedings.

4. The particulars furnished by the respondents show that the land in Survey No.733/8 as well as other lands were sought to be acquired by the Government for the formation of 'Kalapatty Neighbourhood Scheme'. For the said purpose, notification under Section 4(1) of the Land Acquisition Act was published in the gazette on 27.02.1991; in two newspapers on 12.03.1991; and public notice in the locality was caused on 23.03.1991. It is the stand of the Land Acquisition Officer that since the appellant/Writ Petitioner's name was not found in the revenue records, the communications/proceedings relating to the Notification under Section 4(1), enquiry under Section 5-A and declaration under Section-6 were issued to the erstwhile owner as his name was found in the revenue records. After enquiry under Section 5-A, Declaration under Section 6 of the Act was published in the gazette on 18.3.1992; in two Dailies on 19.3.1992 and in the locality on 20.3.1992. Finally, award was passed on 18.3.1994, whereas, the Writ Petition was filed only on 21.5.1994 well after passing of the award. The learned Judge dismissed the Writ Petition on the ground of laches.

5. Admittedly, the petitioner/appellant was not given notice and he did not participate in the enquiry under Section 5-A

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of the Act. In the counter affidavit filed before the learned single Judge, it is specifically stated that the names of the land owners were ascertained from the village records and that the petitioner/appellant's name was not found in the village records, hence, no notice was issued to him. As against the said stand of the Land Acquisition Officer, the learned Senior Counsel has brought to our notice that, after purchase of the land on 27.04.1987, the appellant paid necessary charges for patta transfer on the same day and made requisition for sub division on 10.07.1987. It is also brought to our notice that the appellant made payment towards sub division charges on 10.07.1987 itself. The appellant also produced a letter of the Village Administrative Officer dated 15.09.1987 and few kist receipts as well as chitta evidencing that he purchased the land and is in enjoyment of the same.

6. We have already referred to the fact that the Notification under Section 4(1) of the Act was published in the Gazette, in the Dailies and in the Locality in the year 1991. Even if we accept that the petitioner had taken some efforts immediately after purchase for transfer of patta, the fact remains, there is no information as to what had happened between September 1987 and February 1991, when the notification under Section 4(1) was published in the gazette. As rightly pointed out by the learned Special Government Pleader, the Land Acquisition Officer has to go by the entries available in the revenue records. The particulars furnished in the counter affidavit show that, on verification of the revenue records, after finding that the petitioner's name was not entered, rightly no notice was issued to him. Though learned Senior Counsel submitted that it is but proper on the part of the District Collector/Land Acquisition Officer to have verified and ascertained the information from the other wing of the Officers and ought to have issued notice to the appellant, as rightly pointed out, the Collector or the Officer authorised is not expected to conduct a roving enquiry into the same.

7. In 1997 (6) SCC 207 (W.B. Housing Board v. Brijendra Prasad Gupta), while considering a similar stand taken by the land owners, the Supreme Court negatived such claim. The following conclusion in paragraph No.8 is relevant,

> " ... The Division Bench has observed that the Collector would have been aware of the pendency of the applications of the writ petitioners for mutation of lands in their names when the same were pending in his office. The Bench in effect observed that it was a case where the right hand did not know what the left hand was doing. This observation sounds good, but knowing the working of the government offices it appears to have no place. Of course, the Collector could have asked for a

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> report from the prescribed authority concerned if any application for mutation of the land was pending with him. But that would be expecting too much from the Collector. It is not part of the duty of the Collector to make a roving inquiry into ownership of the persons. We are of the opinion that the requirements of the law were met when notices were served upon the recorded owners as per the Record of Rights. Again we do not think in a case like the present one, it is for the Collector to make enquiries from the registration office to find out if the land had since been sold by the recorded owners. In Winky Dilawari v. Amritsar Improvement Trust (1996) 11 SCC 644), this Court observed that the public authorities were not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the the property. ..."

8. The above decision of the Supreme Court makes it clear that the Collector or the authorised person is to verify the revenue records and issue notice to the person or persons concerned as entered. No doubt, in the enquiry, if the erstwhile landowner appears and informs about the transfer of the land in favour of his purchaser, it is but proper on the part of the Land Acquisition Officer to verify and issue notice to the person concerned. In the case on hand, though notice was served to the erstwhile owner, admittedly, he did not appear and inform anything to the Land Acquisition Officer. In such circumstances, merely because some steps were taken in the year 1987 for transfer of patta, in the absence of changes in the revenue records, the respondents cannot be faulted with for not issuing notice to the appellant. Absolutely there is no explanation for not taking further steps from September, 1987 to February, 1991 for transfer of patta in his name. In such circumstances, we reject this contention.

9. Learned Senior Counsel appearing for the appellant next contended that the Notification issued under Section 4(1) is vague and on that ground, the acquisition proceedings are to be quashed. Though learned Senior Counsel for the appellant relied on several earlier decisions of the Supreme Court and this Court, in view of the three Judges Bench decision of the Supreme Court reported in 1996 (1) SCC 250 (State of T.N. vs. L.Krishnan), the said contention is liable to be rejected. Their Lordships, in categorical terms, have held that Section 70 of the Housing Board Act enables the Government to acquire any land required by the Board 'for any of the purposes of this Act'. They also held that the purposes of the Act are not confined to execution of the schemes framed by the Board under Sections 37 to 56 (in Chapter VII) but extend to the execution of the schemes transferred to it or agreed to be undertaken by the

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Board, which schemes have to be executed by the Board as if they are provided by the Housing Board Act. They further held that Section 70 is an affirmation, a recognition, of the power of the Government to acquire any land required by the Housing Board for any of the purposes of the Act. In the said decision, Their Lordships have also explained and distinguished the earlier decision namely State of T.N. vs. A.Mohammed Yousuf (1991) 4 SCC 224. It is relevant to mention that, in the Notification under Section 4(1) of the Act, the Government have specifically stated that the lands mentioned are needed for a public purpose, ie., for the construction of houses under 'Kalapatty Neighbourhood scheme' of Tamil Nadu Housing Board. In such circumstances, it cannot be contended that the Notification is vague and no public purpose exists.

10. Finally, learned Senior Counsel for the appellant submitted that the learned Judge is not justified in dismissing the Writ Petition on the ground of delay and laches. We have already referred to the fact that, after completion of the formalities, award was passed on 18.3.1994 whereas the Writ Petition was filed only on 21.5.1994. We have also referred to the fact that, as per the entries in the Revenue Records, notice was sent to the erstwhile owner and no one appeared in the enquiry. In such circumstances and in view of the factual details, viz., strict compliance of the mandatory provisions and Rules, publication of notice in the gazette, two dailies and in the locality, we are in entire agreement with the conclusion arrived at by the leaned Judge and unable to accept the contra argument made by the learned Senior counsel for the appellant.

11. In view of our discussion and conclusion, we do not find any valid ground to interfere with the acquisition proceedings. Consequently, writ appeal fails and the same is dismissed. No costs. In view of the assertion of the appellant that possession is still with him and also taking note of the fact that the said scheme was not successful as it was not implemented fully, the appellant is permitted to make a representation to the Government for granting exemption or withdrawal from the acquisition proceedings within a period of four weeks from the date of receipt of copy of this Order. It is made clear that, if any such representation is made, the first respondent/Government shall consider and dispose of the same in accordance with law within a period of 12 weeks thereafter.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Government,State of Tamilnadu
   Housing and Urban
   Development Department, Fort St. George, Chennai-9.

2. The Special Tahsildar, (Land Acquisition)
Housing Scheme Unit II, Collectorate, Coimbatore-18.

1 cc to Govt. Pleader, Sr. 36212
1 cc to Mr.K.Goviganesan, Advocate, Sr. 36235

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